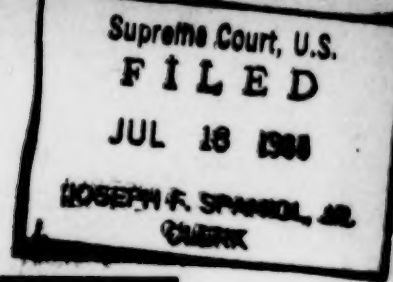


No. 87-1064



In the Supreme Court of the United States

OCTOBER TERM, 1988

UNITED STATES OF AMERICA, PETITIONER

v.

PHILIP GEORGE STUART, SR., AND MONS KAPOOR

**ON WRIT OF CERTIORARI TO
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JOINT APPENDIX

BRIAN L. MCEACHRON

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701 Fifth Avenue
Seattle, Washington 98104
Counsel for Respondents*

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Department of Justice
Washington, D.C. 20530
(202) 633-2217
Counsel for Petitioner*

**PETITION FOR A WRIT OF CERTIORARI
FILED DECEMBER 24, 1987
CERTIORARI GRANTED MAY 2, 1988**

47 pp
follow

In the Supreme Court of the United States

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No. 87-1064

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PHILIP GEORGE STUART, SR., AND MONS KAPOOR

*ON A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

JOINT APPENDIX

TABLE OF CONTENTS*

	Page
1. Docket entries in the court of appeals, No. 85-4421	1
2. Docket entries in the court of appeals, No. 86-3791	7
3. Docket entries in the district court, No. C84-511	12
4. Docket entries in the district court, No. C84-512	15

* The opinions and orders of the court of appeals and the district court are printed in the appendix to the petition for a writ of certiorari and have not been reproduced here.

CONTENTS – Continued:	Page
5. Petition to Quash Summons, No. C84-511 ...	18
Exhibit A (summons)	21
6. Response in Opposition to Petition to Quash, No. C84-511	22
7. Affidavit of Thomas J. Clancy	27
8. Declaration of Deborah Gavin	30
Exhibit A (certification of service of sum- mons)	33
9. Affidavit of Brian L. McEachron	34
Exhibit A (Interrogatories)	38
Exhibit B (Objections of the United States to Discovery)	42
10. Order granting certiorari	44

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 85-4421

PHILIP GEORGE STUART, SR., PETITIONER-APPELLANT

v.

UNITED STATES OF AMERICA, RESPONDENT-APPELLEE

DOCKET ENTRIES

DATE	FILINGS-PROCEEDINGS
<i>1985</i>	
Dec. 23	Docket number assigned. JS-34 prepared. \$65 sm
Dec. 23	Docket cause and entered appearances of counsel. sm
Dec. 23	CAD form sent to counsel for appellant. sm
<i>1986</i>	
Jan. 07	Filed appellant's Civil Appeals Docket State- ment (CONFATT). sm
Jan. 15	Filed as of 01-02-86, Certificate of Record (NT). sm
FEB. 6	File order (COMFATT, WPV) releasing ap- peal from prebriefing reference program. Clerk to establish due date for opening brief.
FEB. 06	APLT'S OPENING BRIEF DUE MARCH 18, 1986. ru

DATE	FILINGS-PROCEEDINGS
Feb. 28	Filed appellant's motion for stay pending appeal of the 12-11-85 order of U.S. District Court of the Western District of Washington enforcing summons. (02-27-86) (CIVATT). sm
Mar. 07	Filed appellee's motion for extension of time for filing opposition to appellant's motion for stay. (03-06-86) (CIVATT). sm
Mar. 10	Filed appellant's motion for a 28-day extension of time to file the opening brief. (03-06-86) (CIVATT). sm
Mar. 19	Filed order (ANDERSON) aplt's motion of March 10, 1986, for a 28 day ext. of time in which to file his opening brief is granted. This brief shall be filed on or before April 15, 1986. jw
Mar. 19	Received late, appellee's opposition to appellant's motion for a stay pending appeal. (03-18-86) (CIVATT) (motion pending). sm
Apr. 15	Filed appellant's motion for a 30-day extension of time to file the opening brief (04-14-86) (CIVATT). sm
Apr. 25	Filed order (Anderson) aplt's motion of 4/15/86 for an ext of time to 5/15/86 in which to file the opening brief is granted. jr
May 16	Filed as of 05-15-86, appellant's motion for a \$32-day extension of time to file the brief (04-14-86) (CIVATT). sm
May 19	Referred to Civatt re: pending motion for stay. jr

DATE	FILINGS-PROCEEDINGS
May 28	Filed Order (ANDERSON) Apl't's motion for an extension of time in which to file the opening brief shall be construed as a motion to stay proceedings. So construed, the motion is granted. The proceedings are stayed until apl't's motion to stay the district court's order is decided or until June 30, 1986 whichever occurs first. jw
July 14	Filed order (Fletcher, Nelson) apl't's motions for stays pending appeal are granted. Appeals 85-4421 and 86-3791 are consolidated and expedited. Both appeals are exempted from the prebriefing conference program. Apl'ts' brief shall be filed within 40 days after entry of this order. Subsequent briefs shall be filed in accordance with FRAP 31a. No extensions of time will be granted. The Clerk shall calendar the appeals for oral argument as soon as practicable after aplee's brief is filed. dmf
Aug. 27	Filed original and 15 copies of appellant's joint opening brief and 5 excerpts of record in 2 volumes. (30 pages) (08-25-86) Notified counsel to submit statement of related cases. sm
Sept. 11	Received as of 09-04-86, original and 15 copies of appellant's joint statement of related cases. sm
Oct. 1	Filed original and 15 copies of appellee's brief. (09-29-86) (40 pages). sm
Oct. 15	FILED AS OF 10-06-86, CERTIFIED COPY OF D.C. DOCKET SHEET IN LIEU OF RECORD ON APPEAL (casefile). sm

DATE	FILINGS-PROCEEDINGS
Oct. 17	Filed as of 10-16-86, Original and 15 copies of appellant's reply brief. (10-13-86) (6 pages). CALENDARED Seattle sm
Dec. 9	AS OF 12/4/86, ARGUED BEFORE & SUBMITTED TO BROWNING, WRIGHT & BOOCHEVER; DEC 4, 1986 CJJ. jr
Dec. 24	Rec'd as of 12/23/86 aple's letter dated 12/22/86 addressing questions from panel to (panel). jr
Dec. 31	Rec'd as of 12/30/86, aplt's letter dated 12/29/86 in response to aple's letter dated 12/22/86 to (panel). jr
1987	
Mar. 24	ORDERED OPINION (BOOCHEVER) FILED AND JUDGMENT TO BE FILED AND ENTERED. sm
Mar. 24	FILED OPINION—REVERSED AND REMANDED (Judge Wright dissenting) sm
Mar. 24	FILED AND ENTERED JUDGMENT. sm
Apr. 3	Filed aplee's motion for ext of time to 5/7/87 to file petition for rehearing. (panel) 4/2 -dmf-
Apr. 9	Filed aplt's bill of costs; served 4/7/87. jr
Apr. 14	Filed order (BOOCHEVER) Upon motion of the appellee in the above cases, it is hereby ordered that its motion for an extension of time until 05-07-87, in which to file petitions for rehearing or petitions for rehearing with suggestion for rehearing en banc is granted. sm
May 11	Filed as of 5/7/87 Orig & 33 Copies Aple's Petition for Rehearing With Suggestion

DATE	FILINGS-PROCEEDINGS
	for Rehearing En Banc (15 pgs); served 5/6/87 to (panel & active judges). jr
June 3	Filed order (BROWNING, WRIGHT, BOOCHEVER) It is hereby ordered that on or before twenty-one (21) days from the date of this order the appellants shall file a response to appellee's petition for rehearing with suggestion for rehearing en banc. sm
July 6	Filed as of 7/1/87 appellants' joint response to petition for rehearing & suggestion for rehearing en banc pursuant to 6/3/87 order. (11 pages); (served 6/29/87) (PANEL & ACTIVE JUDGES) ah
Aug. 27	Filed order (Browning, Wright & Boochever) the petition for rehearing is denied and the suggestion for rehearing en banc is rejected. jr
SEP. 8	MANDATE ISSUED COSTS TAXED
1988	
Jan. 7	Received from the Supreme Court of the United States, notice of filing of petition for certiorari. SC #1064, filed 12/23/87. sm
MAY 9	Rec'd notice dated 5/3/88 from Supreme Court granting petition for writ of certiorari 5/2/88. jr

DATE FILINGS-PROCEEDINGS
MAY 17 RECEIVED ORIGINAL DISTRICT COURT
FILE IN 1 VOLUME. (RECORDS)

A TRUE COPY
ATTEST JUN 14, 1988

CATHY A. CATTERSON
CLERK OF COURT

By: /s/ SYLVIA McALISTER
SYLVIA McALISTER
County Clerk

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 86-3791

MONS KAPOOR, PLAINTIFF-APPELLANT

v.

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

DOCKET ENTRIES

DATE	FILINGS-PROCEEDINGS
5/2/86	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Sent appellant(s) civil appeals docketing statement. (jr)
5/2/86	Filed certificate of record on appeal RT filed in DC n/a [86-3791] (jr)
5/16/86	Rec'd notice of appearance of Michael L. Paup, Roger M. Olsen as counsel for appellee, USA. (dmf)
5/20/86	Filed as of 05/19/86 appellant's Civil Appeals Docketing Statement served on 5/16/86. (to CONFATT) (sm)
6/2/86	Filed as of 05/30/86, Appellant Mons Kapoor's motion to consolidate case #86-3791 with #85-4221 [86-3791]; served on 5/29/86. [37767] (CIVATT) (sm)
6/2/86	Filed as of 5/30/86, Appellant Mons Kapoor's motion to stay the March 25, 1986 order of the district court which ordered the en-

DATE

FILINGS-PROCEEDINGS

enforcement of the summons issued by IRS. [86-3791]; served on 5/29/86. [37772] (CIVATT) (sm)
 6/5/86 Filed order CONFATT (NPV) releasing case from CONFATT and requesting clerk to set briefing schedule. Appellant's brief, excerpts and designation are due on 7/15/86 for Mons Kapoor. [86-3791] (jr)
 6/9/86 Filed Appellee USA's opposition to appellant's motion for a stay pending appeal, served on 6/6/86. (CIVATT) [Entry date 6/10/86] (sm)
 7/14/86 Filed order, in 85-4421, (FLETCHER, NELSON) aplts' motions for stays pending appeal are granted. Appeals 85-4421 and 86-3791 are consolidated and expedited. Both appeals are exempted from the prebriefing conference program. Aplts' opening brief shall be filed within 40 days after entry of this order. Subsequent briefs shall be filed in accordance with FRAP 31a. No extensions of time will be granted. The Clerk shall calendar the appeals for oral argument as soon as practicable after aplee's brief is filed. [86-3791] (dmf)
 8/28/86 Filed in 85-4421 original and 15 copies Appellant Mons Kapoor's opening brief 30 pages and 5 excerpts of record in 2 volumes, with minor deficiencies, served on 8/25/86. Notified counsel. [86-3791] (sm)

DATE

FILINGS-PROCEEDINGS

9/11/86 Received as of 09/04/86, in #85-4421, Appellant Philip George Stuart, Sr. and Appellant Mons Kapoor satisfaction of (minor) brief (joint statement of related cases) deficiency. [86-3791] (sm)
 10/1/86 Filed in 85-4421, original and 15 copies appellee USA's 40 pages brief, with excerpts of record of 0 volumes, served on 9/29/86. [86-3791] appellant's reply brief is due 10/20/86 for Mons Kapoor (sm)
 10/2/86 Recvd in 85-4421 as of 10/1 notice of appearance of Charles E. Brookhart John Aa. Dudeck Jr. as csls for Aple USA [86-3791] (vm)
 10/6/86 Filed Certified copy of d.c. docket sheet in lieu of record on appeal. (casefile) [86-3791] [Entry date 10/8/86] (sm)
 10/17/86 Filed in 85-4421, original and 15 copies Appellant Mons Kapoor opreply brief 6 pages, and served on 10/13/86. [86-3791] (dmf)
 10/17/86 CALENDARED: SE 12/4/86 9:00 a.m. (dd)
 10/22/86 INVENTORIED [86-3791] (mm)
 12/11/86 ARGUED BEFORE AND SUBMITTED 12/4/86 TO: James R. BROWNING, Eugene A. WRIGHT & Robert BOOCHEVER; CJJ. [86-3791] (jr)
 12/24/86 Received as of 12/23/86 in 85-4421, appellee's (USA) letter dated 12/22/86 addressing questions from panel to (panel). [86-3791] (jr)
 3/24/87 FILED OPINION (BROWNING, WRIGHT, Dissenting, BOOCHEVER, Author),

DATE	FILINGS-PROCEEDINGS
	Termination on the merits after oral argument (Reversed and Remanded) FILED AND ENTERED JUDGMENT [86-3791] (sm) [Entry date 3/25/87]
3/24/87	JS-34 disposition reported. Termination on the merits after oral argument (Reversed and Remanded) [86-3791] (sm) [Entry date 3/25/87]
4/3/87	Filed, in 85-4421, appellee's USA motion to extend time to file petition for rehearing to 5/7/87, [86-3791] served on 4/2/87 [117307] (PANEL) (dmf) [Edit date 4/3/87]
4/14/87	Filed order (BOOCHEVER) Upon motion of the appellee in the above cases, it is hereby ordered that its motion for an extension of time until 05/07/87, in which to file petitions for rehearing or petition for rehearing with suggestion for rehearing en banc is granted. [117307-1] [86-3791] (sm)
5/11/87	[129933] Filed as of 05/07/87 in 85-4421 original and 33 copies Appellee USA petition for rehearing with suggestion for rehearing en banc 15 pages, served on 5/6/87 to (panel & active judges). [86-3791] (jr) [Edit date 5/11/87]
6/3/87	Filed order (BROWNING, WRIGHT, BOOCHEVER) It is hereby ordered that on or before twenty-one (21) days from the date of this order the appellants shall file a response to appellee's petition for rehearing with suggestion for rehearing en banc. [86-3791] (sm)

DATE	FILINGS-PROCEEDINGS
7/6/87	Filed as of 7/1/87 appellants' joint response to petition for rehearing and suggestion for rehearing en banc pursuant to 6/3/87 order (11 pages) served 6/29/87. (PANEL & ACTIVE JUDGES) [86-3791] (ah)
8/27/87	Filed in 85-4421, order (BROWNING, WRIGHT & BOOCHEVER) the petition for rehearing is denied and the suggestion for rehearing en banc is rejected. [129933-1] [86-3791] (jr)
9/8/87	MANDATE ISSUED. Costs taxed. [86-3791] (dmf)
1/7/88	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 87-1064 filed on 12/23/87. (sm)
5/9/88	Received notice from Supreme Court, petition for certiorari GRANTED on 5/2/88 (jr)

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON

No. C84-511

PHILIP GEORGE STUART, SR., PLAINTIFF

v.

UNITED STATES OF AMERICA,
FOR THE DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, DEFENDANT

DOCKET ENTRIES

DATE	NR	FILINGS-PROCEEDINGS
<i>1984</i>		
Apr 20	1	Petition to quash summons & Issued s/c
Apr 24	2	RETURN OF SERVICE—of s/c upon U.S.A. on 4-23-84;
Apr 25	3	AFFIDAVIT OF SERVICE—of s/c upon U.S.A. on 4-23-84
Apr 27	4	ORDER OF REFERENCE— and direct- ing responses, to Mag Weinberg. CC to C, Judge, Mag (4-27-84)
Jun 29	5	RESPONSE—defts, in opposition to petition to quash IRS.
Jun 29	6	OBJECTIONS—defts, to petitioner's use of discovery
Jun 29	7	MOTION—defts, for summary enforce- ment (Not noted, but to be noted shortly)
Jun 29	8	MEMORANDUM—in support of mo- tion

DATE	NR	FILINGS-PROCEEDINGS
Jun 29	9	AFFIDAVIT—of Thomas J. Clancy
Jun 29	10	DECLARATION—of Deborah Gavin (unsigned)
Jun 29	11	PRAECIPE—stating that the Declara- tion will be signed by Deborah Gavin after July 17, 1984.
Jun 29	12	CERTIFICATE—of service
Jul 3	13	NOTICE—of motion re: mt for sum- mary enforcement, <i>Noted for 7-20-84</i>
Jul 17	14	DECLARATION—of Deborah Gavin (signed)
Jul 23	15	MEMORANDUM—of petitioner in opposition to respondent's mtn for summary enforcement
Jul 23	16	AFFIDAVIT—of Brian L. McEachron
Jul 23	17	SERVICE—certificate of mlg #15 & #16
Jul 27	18	MINUTE ENTRY—Oral argument heard before Mag Weinberg, Matter taken under submission
Aug 21	19	STATUS MEMORANDUM—file review set for Nov. 15, 1984.
Dec 5	20	STATUS MEMORANDUM—file re- view set for Jan. 31, 1985.
<i>1985</i>		
Feb 8	21	STATUS MEMORANDUM—file re- view set for May 2, 1985
May 7	22	STATUS MEMORANDUM—file re- view set for June 27, 1985
July 8	23	STATUS MEMORANDUM—matter still pending b4 Mag. Weinberg. File review 10/10/85

DATE	NR	FILINGS-PROCEEDINGS
Sept 30	24	REPORT & RECOMMENDATION – by Mag Weinberg, Objs due 10-14-85.
Sept 30	–	LODGED ORDER
Oct 15	25	OBJECTIONS—to R & R, <i>Noted for Nov 1, 1985.</i>
Oct 15	26	CERTIFICATE—of service
Oct 22	27	STATUS MEMORANDUM—file review set for Nov 14, 1985
Oct 29	28	RESPONSE—defts, to plts objections to Mag. Weinberg R & R
Nov 1	29	ORDER ENFORCING IRS SUMMONS—Court adopts R & R, Petitioner's request that the US be required to respond to petitioner's interrogatories is denied; Petition to quash summons is denied.; Motion for summary enforcement is granted; Within 30 days from entry of this order, respondent shall submit an appropriate form of order for enforcement of the summons. C to C, Judge, Mag (Ent 11-1-85)
Nov 29	–	LODGED FINAL JUDGMENT AND ENFORCEMENT ORDER
Dec 11	30	FINAL JUDGMENT AND ENFORCEMENT ORDER—Petition to quash summons is denied, & NW Commercial Bank shall comply with and obey the summons served upon it. C to C, Ju Bank, Mag (ent 12-11-85)
Dec 17	31	NOTICE OF APPEAL—by petr from judgment ent 12/11/85.

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON

No. C84-512

MONS KAPOOR, PLAINTIFF

v.

UNITED STATES OF AMERICA,
FOR THE DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, DEFENDANT

DOCKET ENTRIES

DATE	NR	FILINGS-PROCEEDINGS
Apr 20	1	PETITION—to quash summons s/c iss
Apr 25	2	ORDER—of reference to JLW cys mld 4-25-84
Apr 24	3	RETURN—of service of s/c on legal messengers 4-23-84
Apr 24	4	SERVICE—affidavit of s/c on U.S. Atty (Cindy Cook) 4-23-84
Jun 27	5	RESPONSE—of deft in opposition to petition to quash
Jun 27	6	OBJECTIONS—of US to petitioner's use of discovery
Jun 27	7	MOTION—of deft for summary enforcement 7-13-84
Jun 27	8	MEMORANDUM—in support of enforcement
Jun 27	9	AFFIDAVIT—of Thomas J. Clancy
Jun 27	10	SERVICE—certificate of #5-10

DATE	NR	FILINGS-PROCEEDINGS
Jun 28	11	PRAECIPE—with attached unsigned affidavit of Deborah Gavin for court's consideration
Jul 17	12	DECLARATION of Deborah Gavin
Jul 23	13	MEMORANDUM of plft in opposition to #7
Jul 23	14	AFFIDAVIT of Brian L. McEachron
Jul 23	15	CERTIFICATE of serv of #13 & 14
Jul 27	—	HEARING HAD b4 JLW. Oral argument heard. Matter under submission.
Sep 1	16	REPORT & RECOMMENDATION by JLW for enforcement of IRS summons Objs due 10/14/85
Sep 1	—	LODGED order enforcing I.R.S. summons
Sep 15	17	OBJECTION to R & R for enforcement of IRS summons noted: 11/1/85
Sep 15	18	CERTIFICATE of srvc of mlg of #17 upon dtfs cnsl
Nov 29	19	RESPONSE by USA to petitioners obj to Mag's R&R for enforcemtn
Nov 29	—	LODGED final judgment & enforcement Order
<i>1986</i>		
Mar 25	20	FINAL JUDGMENT & ORDER that petition to quash summons is denied; NW Commercial Bank Shall comply w/and obey summons served upon it, by appearing at ofc of IRS, Bellingham B4 special Agent Deborah Gavin or her designee at time agreed upon by ptys but not later than 20 days after entry of order, then & there

DATE	NR	FILINGS-PROCEEDINGS
		to testify & produce for inspection & cy all of books, papers, records & other data described in summons served upon it, such appearance, testimony, inspection & cy to continue from dy to dy until complete. ent & mld 3/25/86
Apr 15	21	NOTICE OF APPEAL—by ptr from Order ent 3/25/86. (ent. 4/15/86)
Apr 15	22	AFFIDAVIT of mailing.
Apr 15	—	Mailed appeal packet to CCA, cc to cnsl. Cert of Rec incl.

UNITED DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. C84-511

PHILIP GEORGE STUART, SR., PETITIONER

v.

UNITED STATES OF AMERICA,
FOR THE DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, RESPONDENT.

PETITION TO QUASH SUMMONS
26 U.S.C. § 7609(b)(2)

[Filed April 20, 1984]

COMES NOW petitioner Philip George Stuart, Sr. and alleges as follows:

JURISDICTION AND VENUE

1. This court has jurisdiction under 26 U.S.C. § 7609(h)(1) over this proceeding which is brought pursuant to 26 U.S.C. § 7609(b)(2) to quash the summons issued to Northwestern Commercial Bank, a third-party recordkeeper within the meaning of 26 U.S.C. § 7609(a)(3).

2. Venue is proper in this court because the subject summons, a true and correct copy of which is attached hereto as Exhibit A and incorporated by reference herein, was received by Northwestern Commercial Bank within this district.

PARTIES

3. Petitioner Philip George Stuart, Sr. is an individual Canadian citizen residing in Powell River, British Columbia who is not a resident or taxpayer of the United States. The records sought in the subject summons relate to petitioner.

4. Respondent United States of America is a sovereign country acting through the Department of the Treasury, Internal Revenue Service in issuing the subject summons.

CLAIM FOR RELIEF

5. Petitioner is informed and believes that the subject summons was issued on or about April 2, 1984, by Deborah Gavin and Karl Marrig, agents and employees of respondent.

6. The summons does not seek examination of books, paper, records or data which is relevant to any inquiry concerning an Internal Revenue tax of the United States nor does it seek to examine any witness in connection therewith. The sole purpose of the summons is to obtain information regarding a Canadian citizen's possible liability for Canadian income taxes under the Canadian Income Tax Act, which information can be requested directly under the applicable Canadian statutes and regulations.

7. The summons was not issued for any of the lawful purposes set forth in 26 U.S.C. §§ 7602, 6420(e)(2), 6421(f)(2) or 6427(h)(2). In issuing the summons without the necessary statutory authority, respondent has failed to follow administrative procedures required by the Internal Revenue Code.

8. Petitioner is informed and believes and on that basis alleges that respondent failed to give the notice of service of the summons required by 26 U.S.C. § 7609(a) by failing

to give said notice within three days of the day on which service was made.

PRAYER

For the reasons stated above, petitioner respectfully prays that:

1. This court enter an order quashing the subject summons and provide that notice to the third-party record-keeper identified above be given; and
2. For such other and further relief as this court may deem warranted.

DATED this 20th day of April, 1984.

Respectfully submitted:

CARNEY, STEPHENSON,
BADLEY, SMITH &
MUELLER

By: /s/ BRIAN L. McEACHRON
BRIAN L. McEACHRON
Of Attorneys for Petitioner

SUMMONS



Department of the Treasury
Internal Revenue Service

Philip George Stuart Sr.
R.R. #3, Matland Road
Powell River, B.C.

In the matter of the Canadian tax liability of
Foreign Operations
Internal Revenue District of District Periods 1980, 1981 and 1982

The Commissioner of Internal Revenue

To Northwestern Commercial Bank

At P.O. Box 819
Bellingham, Washington 98227

acting pursuant to an
exchange of information
request from the Department
of National Revenue, Canada,
under Articles XIX and XXI of
the United States-Canada
Income Tax Convention of 1942
(as amended).

You are hereby summoned and required to appear before Deborah Garcia
an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the
tax liability or the collection of the tax liability or for the purpose of securing into any offense connected with the administration or enforcement of the internal revenue laws
concerning the person identified above for the periods shown.

All records in your possession, custody, or control pertaining to
accounts in the name of Philip George Stuart, Sr., R.R. #3, Matland
Road, Powell River, B.C., pertaining to account number 1712-549131, for
the period January 1, 1980 through December 31, 1982, to include, but not
limited to, the following items:

1. All documents reflecting loan transactions, including
application forms; collateral pledged or other
guarantees, letters of credit, financial statements,
transfer accounts and correspondence; and
2. All documents reflecting bonds, stocks and/or other
investment transactions.

Business address and telephone number of Internal Revenue Service officer named above:

Box 2418, 915 Second Avenue, Seattle, WA (206) 442-3576

Place and time for appearance:

at 104 West Margolis, Bellingham, WA

on the 1st day of May, 19 84 at 1 o'clock N.M.

Issued under authority of the Internal Revenue code this third day of April, 19 84

Deborah T. Garcia
Signature of Issuing Officer

Special Agent
Title

[Signature]
Signature of Approving Officer (if applicable)

[Signature]
Title

Part C — To be given to noticee

EXHIBIT A

Form 2039-C (Rev. 12-83)

IN THE UNITED STATES COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

No. C84-511

PHILIP GEORGE STUART, SR., PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

RESPONSE IN OPPOSITION TO PETITION TO
QUASH INTERNAL REVENUE SUMMONS

The defendant United States of America responds as follows to the Petition to Quash Internal Revenue summons filed in this case:

GENE S. ANDERSON
United States Attorney

CHRISTOPHER L. PICKRELL
Assistant U.S. Attorney

F. MICHAEL KOVACH, JR.
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D.C. 20530
Telephone: (202) 724-6605

FIRST DEFENSE

The petition fails to state a claim upon which relief may be granted. Respondent has shown by the affidavits of Special Agent Deborah Gavin and Mr. Thomas J. Clancy that each of the *Powell* requirements for enforcement of this summons has been met. Petitioner has failed to assert any valid objections to enforcement.

SECOND DEFENSE

The United States of America responds to the Petition to Quash as follows:

1. Admits.
2. Admits.
3. Admits.
4. Admits.
5. Admits.

6. Denies that the Canadian authorities can obtain the information sought by requesting that information directly. Petitioner's resistance to this summons suggests the contrary. The Canadian authorities have no authority to serve and enforce Canadian summonses against United States banks, but may seek the aid of the United States under the Income Tax Convention with Canada of March 4, 1942, 56 Stat. 1399. Admits the remaining allegations.

7. Denies.
8. Denies.

In further response and pursuant to Code Sections 7402(b) and 7609(b)(2)(A), the United States states as follows:

9. This Court has subject matter jurisdiction to enforce and to compel compliance with this Internal Revenue summons pursuant to Code Sections 7402(b), 7604(a) and 7609(b)(2)(A).

10. Deborah J. Gavin, who issued the summons, is a Special Agent with the Criminal Investigation Division of the Internal Revenue Service, employed in the Seattle, Washington Revenue District. Special Agent Gavin is authorized to issue Internal Revenue summonses under the authority of Section 7602. Treas. Reg., §301.7602-1, 26 C.F.R. Sec. 301.7602-1; I.R.S. Delegation Order No. 4 (as revised).

11. The summoned party, Northwestern Commercial Bank, is located in Bellingham, Washington, within the jurisdiction of this Court.

12. Mr. Philip Pinkus, Director, Provincial and International Relation Division, Revenue Canada, a competent authority of the Canadian Government, requested information regarding Philip George Stuart, Sr., a Canadian citizen, pursuant to Articles XIX and XXI of the Income Tax Convention with Canada, March 4, 1942, (56 Stat. 1399). The Canadian taxing authorities' investigation of Mr. Stuart is a criminal investigation, preliminary stage.

13. The Director of Foreign Operations District, Internal Revenue Service, Mr. Thomas J. Clancy, or his delegate, reviewed the request and directed that an agent be assigned to investigate loan and investment transactions of Philip George Stuart, Sr., for 1980, 1981 and 1982.

14. The District Director is a competent authority for purposes of administering routine and specific exchange of information programs pursuant to tax treaties.

15. The District Director specifically determined the following:

(a) that the Canadian request regarding Mr. Stuart is within Articles XIX and XXI of the Convention and that it is appropriate for the United States to honor the request;

(b) the same type of information can be obtained by the taxing authorities under Canadian law;

(c) the requested information is relevant to a determination of Mr. Stuart's correct Canadian tax liability; and

(d) the information sought is not in the possession of the Internal Revenue Service or the Canadian taxing authorities.

16. Special Agent Gavin was assigned to investigate loan and investment transactions of Mr. Stuart for 1980, 1981 and 1982.

17. Pursuant to her investigation, Special Agent Gavin issued an Internal Revenue summons, form 2039, on April 2, 1984, directed to Northwestern Commercial Bank of Bellingham, Washington.

18. On that same day, April 2, 1984, she personally served the summons by handing an attested copy to Jane Todahl, an employee of the bank who is authorized to accept service.

19. On April 3, 1984, she gave notice of the service of the summons to Philip George Stuart, Sr., by registered mail addressed to his last known address at R.R. #3, Maitland Road, Powell River, British Columbia, Canada.

21. The summoned party is in possession of books, records, papers or other data relating to Stuart's loan and investment transactions during the years under investigation.

22. Those books and papers sought by the summons may shed light on Mr. Stuart's liabilities and are relevant.

WHEREFORE, the United States of America, respectfully requests as follows:

(1) That the Court deny the Petition to Quash without further hearing;

(2) That the Court find that Northwestern Commercial Bank is obligated to produce the records sought by the summons; and

(3) That the Court grant such other and further relief as is just and proper.

GENE S. ANDERSON
United States Attorney
CHRISTOPHER L. PICKRELL
Assistant U.S. Attorney

/s/ HELEN L. DUNCAN FOR
F. MICHAEL KOVACH, JR.
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D.C. 20530
Telephone: (202) 724-6605

IN THE UNITED STATES COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

No. C84-511

PHILIP GEORGE STUART, SR., PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT.

AFFIDAVIT OF THOMAS J. CLANCY

District of Columbia)
City of Washington) ss

THOMAS J. CLANCY, being first duly sworn, deposes and says:

1. I am Director of Foreign Operations District, Internal Revenue Service, Washington, D.C. I have served as Director since May 16, 1982, and as Acting Director from March 21, 1982, until my formal appointment. Pursuant to Commissioner of Internal Revenue Delegation Order No. 114 (Rev. 3), issued March 21, 1982, a copy of which is attached to this affidavit, authority to act as "competent authority" for the purpose of administering Routine and Specific Exchange of Information Programs pursuant to tax treaties, including the Convention between the United States of America and Canada, signed March 4, 1942, was delegated to the Director, Foreign Operations District.

2. By letter dated January 3, 1984, the Government of Canada, through Mr. Philip Pinkus, Director, Provincial and International Relations Division, Revenue Canada, made a request for information to be used to determine

the correct tax liability of Mr. Philip George Stuart, Sr., under the laws of Canada. The Canadian taxing authorities' investigation of Mr. Stuart is a criminal investigation, preliminary stage.

3. As competent authority on behalf of the United States, I have determined that the Canadian request for information regarding Mr. Stuart is within Articles XIX and XXI of the Convention. I have further determined that it is appropriate for the United States to honor this request by its treaty partner and thereby lend assistance and support to Canada, as the Convention contemplates.

4. I am satisfied that the requested information is not within the possession of the Internal Revenue Service or the Canadian tax authorities; that the requested information may be relevant to a determination of the correct tax liability of Mr. Stuart under Canadian law; and that the same type of information can be obtained by tax authorities under Canadian law.

5. It is the understanding of the parties to the Convention, and has been throughout its administration, that information exchanged will only be used by the requesting state to secure the correct application of the provisions of the Convention or of its domestic laws concerning the taxes covered by the Convention.

6. Exchanged information may only be disclosed as required in the normal administrative or judicial process operative in the administration of the tax system of the requesting country. Improper use of information furnished for income tax purposes would be protested, and, if not discontinued would lead to recommendations to discontinue exchanges of information.

7. It is the practice of the United States competent authority to stamp information exchanged pursuant to an

income tax treaty, including the United States-Canada Income Tax Convention, as follows:

This information was secured under the provisions of an Income Tax Treaty with a foreign government and its use and disclosure must be governed by the provisions of such treaty.

The Canadian competent authority imposes a similar restriction in each cover letter transmitting information supplied to the United States and the United States competent authority stamps such information as stated above.

Executed this 21st day of June, 1984.

/s/ THOMAS J. CLANCY
 THOMAS J. CLANCY
 District Director
 Foreign Operations District

Subscribed and sworn to before me this 21st day of June, 1984.

/s/ DEBBIE A. HALLAND
 NOTARY PUBLIC

My commission expires: October 14, 1985

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

No. C84-511W

PHILIP GEORGE STUART, SR., PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

DECLARATION OF DEBORAH GAVIN

Received July 18, 1984

DEBORAH GAVIN deposes and declares as follows:

1. I am employed as a special agent in the Criminal Investigation Division of the Internal Revenue Service, Seattle District, with my post of duty at 915 Second Avenue, Seattle, Washington.

2. In my capacity as a special agent, I am seeking all records pertaining to loan and investment transactions of Philip George Stuart, Sr., a resident of Canada, for the taxable years 1980, 1981 and 1982.

3. This investigation was initiated as a result of a request for information by a competent authority of Canada made pursuant to Articles XIX and XXI of the Income Tax Convention with Canada, March 4, 1942, and at the direction of the Director of the Foreign Operations District of the Internal Revenue Service. There is no pending investigation of Mr. Stuart respecting his tax liabilities under the laws of the United States.

4. I understand that the information is sought by Canadian tax authorities in connection with a criminal tax investigation, preliminary stage, to determine the correct income tax liabilities of Philip George Stuart, Sr., under the laws of Canada for the years 1980, 1981 and 1982.

5. On April 2, 1984, I issued an Internal Revenue summons, form 2039, a copy of which is Exhibit A to this declaration. The summons directs Northwestern Commercial Bank to appear to testify and to produce for examination the books, records, and other documents described in the summons. I served the summons on Northwestern Commercial Bank by handing an attested copy to Jane Todahl on April 2, 1984.

6. On April 3, 1984, I mailed by registered mail addressed to Philip George Stuart, Sr., R.R. #3, Maitland River, Powell River, British Columbia, notice of the service of the summons and a copy of the summons.

7. Northwestern Commercial Bank is in possession or control of the books, records, and other papers or has knowledge relating to the above-described investigation.

8. A petition to quash the subject summons was filed by Philip George Stuart, Sr., on April 20, 1984.

9. At the direction of Mons Kapoor, Northwestern Commercial Bank has refused and continues to refuse to comply with the summons.

10. Neither I nor the Internal Revenue Service possesses the books, records, and other documents demanded by the summons.

11. The books, records, and other documents demanded by the summons are necessary to the completion of my investigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of July, 1984.

DEBORAH J. GAVIN

DEBORAH GAVIN

Special Agent

Internal Revenue Service

**SERVICE OF SUMMONS, NOTICE
and Record-keeper Certificates**
(Pursuant to section 7603, Internal Revenue Code)



I certify that I served the summons shown on the front of this form on:

Date:

4.2.5.1

Time

1:000000

How

I handed an attested copy of the summons to the person to whom it was directed.

Summons

Was

11

I left an attested copy of the summons at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any):

Served

Signature

1162

Time

附錄

This certificate is made to show compliance with section 7609 Internal Revenue Code. This certificate applies only to summonses served on third party recordkeepers and not to summonses served on other third parties or any officer or employee of the person to

whose liability the summons relates nor to summonses in aid of collection, to determine the identity of a person having a numbered account or similar arrangement or to determine whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that within 3 days of serving the summons I gave notice (Form 2039-D) to the person named below on the date and in the manner indicated.

Date of Giving Notice: 7-7-84

Time: 2:00

Name of Noticee:

Philip George Starn Sr

Address of Noticee (if mailed):

Markland Rd. Fall River

**How
Notice
Was Given**

I gave notice by certified or registered mail to the last known address of the noticee.

1 gave notice by handing it to the
noticee

() In the absence of a last known address of the notice I left the notice with the person summoned

☐ I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any):

No notice is required

Signature

11/24/91

Title

Exiled Sicilian

Finally that the period prescribed for beginning a proceeding to quash this summons has expired and that no such proceeding was instituted or that the notice consents to the examination

Signature

Title

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

No. C84-511

PHILIP GEORGE STUART, SR., PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

AFFIDAVIT OF BRIAN L. McEACHRON

STATE OF WASHINGTON)
COUNTY OF KING) ss

BRIAN L. McEACHRON, being first duly sworn,
deposes and says as follows:

1. He makes this affidavit based on personal knowledge and if called upon to testify regarding matters asserted herein, would be competent to do so.

2. He is a member of the bar of this Court, duly licensed to practice law and is an associate of Carney, Stephenson, Badley, Smith & Mueller, attorneys of record for Petitioner.

3. On June 28, 1984, pursuant to the requirements of Local Civil Rule 37, he conferred by telephone with F. Michael Kovach, Jr., the trial attorney, Tax Division, U.S. Department of Justice assigned to this proceeding, regarding the Respondent's objections to the Petitioner's request for discovery and its failure and refusal to provide any discovery whatsoever. (True and correct copies of Petitioner's discovery requests and Respondent's responses

thereto are attached as Exhibits A and B respectively). Mr. Kovach was informed that the telephone conference was being undertaken in compliance with Civil Rule 37 preliminary to Petitioner filing a Motion to Compel Discovery if necessary. Mr. Kovach explained the government's position was absolute and no discovery would be provided to Petitioner absent a court order.

4. Mr. Kovach further informed the undersigned that the letter dated January 3, 1984 from Mr. Philip Pinkus, Director, Provincial and International Relations Division, Revenue Canada, which made the request for information, had not been revealed to him. Mr. Kovach stated that it was the practice of the Internal Revenue Service to consider such letters "Secret".

5. Attached to my affidavit are true and correct copies of the following Canadian statutes and court decisions as Exhibits C through H respectively: Canadian Charter of Rights and Freedoms, Constitution Act, 1981; Canadian Income Tax Act § 231; *Minister of Nat'l. Revenue v. Coopers & Lybrand*, 78 D.Tax 6528 (1978); *New Garden Restaurant and Tavern, Ltd., et al. v. Minister of Nat'l. Revenue*, 83 D.Tax 5338 (Ont. High Court of Justice, 1983); *Lipsey v. Minister of Nat'l Revenue*, 84 D.Tax 6192 (Fed. Ct.—Trial Div. 1984); and *Kruger v. Minister of Nat'l Revenue*, 83 D.Tax 5322 (Fed. Ct.—Trial Div., 1983).

FURTHER AFFIANT SAITH NAUGHT.

/s/ BRIAN L. McEACHRON
BRIAN L. McEACHRON

SUBSCRIBED AND SWORN to before me this 23rd
day of July, 1984.

/s/ LUCY E. OBERNDORF
Notary Public in and for the
State of Washington
residing at Seattle.

Exh. A

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. C84-511

PHILIP GEORGE STUART, SR., PETITIONER

v.

UNITED STATES OF AMERICA,
FOR THE DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, RESPONDENT

**PETITIONER'S FIRST SET OF INTERROGATORIES TO
RESPONDENT UNITED STATES OF AMERICA**

TO: Respondent, United States of America; and
TO: Its Attorneys of Record:

Petitioner PHILIP GEORGE STUART, SR. hereby requests, pursuant to Rule 33, Federal Rules of Civil Procedure, that you answer each of the following interrogatories separately and fully in writing under oath and serve a copy of the answers on petitioner's counsel of record, Brian L. McEachron, of Carney, Stephenson, Badley, Smith & Mueller, P.S., 17th Floor Park Place Building, Seattle, Washington 98101, on or before June 18, 1984.

Exh. A

INTERROGATORIES

Interrogatory No. 1: Give the full name, title, business address, and branch, division, or section assignment of the person or persons in the Department of National Revenue, Canada, who made the request giving rise to the summons sought to be quashed in this action.

ANSWER:

Interrogatory No. 2: Did the person or persons identified above in your response to Interrogatory No. 1 state any reasons for making the request? If so, please state the reasons given.

ANSWER:

Interrogatory No. 3: Did any other person employed by the Department of National Revenue, Canada, or any

other Canadian government agency, including, but not limited to the Royal Canadian Mounted Police, give any reason for the request to exchange information? If so, please state the reasons given.

ANSWER:

Interrogatory No. 4: Was the request giving rise to the summons sought to be quashed in this action made in writing? If so, please identify any documents constituting, referring to, or summarizing said request by giving a description of the type of document, its author, its addressees, its date and a summary of its contents.

ANSWER:

Interrogatory No. 5: Has any person informed you that the request for information made by the Department of National Revenue, Canada, is part of an ongoing or contemplated criminal investigation?

ANSWER:

Interrogatory No. 6: If your answer to the preceding interrogatory is affirmative, please give the full name, title, business address and branch, division, or section assignment of the person or persons who made such representation, identifying the date any such representation was made and its form, e.g., letter, telephone call, face-to-face communication.

ANSWER:

DATED this 15th day of May, 1984.

CARNEY, STEPHENSON, BADLEY,
SMITH & MUELER, P.S.

By: /s/ BRIAN L. MCEACHRON
BRIAN L. MCEACHRON
Of Attorneys for Petitioner

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

_____, being first duly sworn, on oath deposes and says: I am authorized to represent and to act on behalf of the United States of America, for the Department of the Treasury, Internal Revenue Service, regarding the above-entitled action; I have read the within and foregoing Interrogatories to Respondent and Answers Thereto, know the contents thereof, and believe the same to be true.

SUBSCRIBED AND SWORN to before me this ____
day of ____, 1984.

NOTARY PUBLIC in and for
the State of Washington,
residing at

Exh. B

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON

No. C84-511

PHILIP GEORGE STUART, SR., PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

**UNITED STATES' OBJECTIONS TO PETITIONER'S
USE OF DISCOVERY**

The United States of America objects to Petitioner's use of discovery and each and every interrogatory propounded on the following grounds:

GENE S. ANDERSON
United States Attorney

CHRISTOPHER L. PICKRELL
Assistant U.S. Attorney

F. MICHAEL KOVACH, JR.
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D.C. 20530
Telephone: (202) 724-6605

1. This case involves the enforcement of an Internal Revenue Service summons.

2. To obtain even an evidentiary hearing in a summons enforcement case, petitioner must demonstrate with specific, sworn statements that there exists a triable issue on a legally sufficient defense to the enforcement of the summons. *United States v. Sherman*, 627 F. 2d 189 (9th Cir. 1980).

3. Even when such a triable issue is demonstrated, an evidentiary hearing is scheduled to determine if the petitioner has made "a substantial demonstration of abuse." *United States v. Will*, 671 F.2d 963, 968 (6th Cir. 1982).

4. Petitioner has not shown that such a triable issue exists. Consequently, he is not entitled to an evidentiary hearing and cannot obtain discovery.

Respectfully submitted this 21st day of June, 1984.

GENE S. ANDERSON
United States Attorney

CHRISTOPHER L. PICKRELL
Assistant U.S. Attorney

/s/ HELEN L. DUNCAN FOR
F. MICHAEL KOVACH, JR.
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D.C. 20530
Telephone: (202) 724-6605

Supreme Court of the United States

No. 87-1064

UNITED STATES, PETITIONER

v.

PHILLIP GEORGE STUART, SR., ET AL.

ORDER ALLOWING CERTIORARI. Filed May 1, 1988.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.